

1 there isn't a how-to book that comes with it.

2 Q Well, I guess what I'm driving at is more in terms
3 of what was brought to the Commission's attention in terms
4 of common bank accounts rather than the Commission
5 pronouncements about common bank accounts.

6 What is your understanding in terms of the
7 information that was brought to the Commission's attention
8 about the existence of common bank accounts in the
9 situations in which they existed?

10 A In all cases or this case?

11 Q Well, why don't we start with in all cases.

12 A I think that each licensee during that period was
13 asking their FCC counsel what do I do. I want to do an LMA,
14 JSA, a JOA or whatever, and the lawyer's interpretation
15 after talking to the staff would be, you know, you've got to
16 have a manager and one employee. You're responsible for
17 signing your presentations to the FCC in terms of the EEO
18 report, annual employment report, your ownership report, et
19 cetera, all the things that are strictly delineated in the
20 rules.

21 Everything past that -- this is like the two door
22 routine, which is kind of silly, where you have a common
23 receptionist, but one station would be through this door and
24 this other station would be through that door where it all
25 went ultimately to the same set of studios.

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1 But some of those things were done for appearance
2 purposes, and as a practical matter in a building, how many
3 had two doors once you passed the reception area. And so
4 that kind of got -- then it was a desk with a different set
5 of call letters on each desk. Finally at the end it was
6 probably one desk with two set of call letters sitting on
7 top of it.

8 Q Right, but what I'm thinking of is in terms of
9 common bank accounts, not -- I'm not worried about common
10 receptionists at this point.

11 A I guess I'm too simplistic here, but almost all
12 the functions of a radio station, other than the ultimate
13 control issue of the licensee and the programming and
14 editorial news content where who decides where they get
15 these particular things, all the rest of the functions are
16 pretty much clerical. I mean, an announcer speaks five
17 minutes per hour. The program director plays four-minute
18 CDs or records. The news director is supplied news from AP
19 or United Press or ABC or some source like that. It's all
20 pretty simplistic business if you look at it in that sense.
21 The bookkeeper could be the same bookkeeper who does the
22 books for a feed store on the side or whatever.

23 So having a common bank account, as long as at the
24 end of the period, the accountants can sort it out and where
25 expense go and where income goes, they have to report to the

1 IRS were that went, which is a pretty firm decision point.

2 Q In the course of your work did you -- were you
3 aware of the Commission hearing designation order in 1993
4 involving the Trinity Broadcasting Network, in particular,
5 that network or an entity affiliated with a network seeking
6 renewal of a license for its television station in Miami,
7 Florida?

8 A Vaguely. I wasn't involved in it directly.

9 Q Were you aware that the Commission, among other
10 things in determining that a hearing was necessary, focused
11 on allegations of who controlled or which entity controlled
12 a particular station and how that control was determined?

13 A I'm sure that occurred. I don't know the
14 particulars.

15 Q Well, you're aware, are you not, that the
16 Commission focuses not only on control of programming but
17 also control of personnel and control of finances?

18 A Yes.

19 Q And how was it that -- how would the Commission --
20 what was your understanding in terms of how the Commission
21 would look at a common bank account in terms of the
22 possibility of inappropriate control by one entity over
23 another?

24 A I guess the answer that I have to give you is that
25 the accounting of that bank account, I look at it as a

1 highway with turns off of it. If the accounting was done in
2 a proper manner, then they would fulfilled the FCC
3 requirements.

4 Q With respect to a general manager, how many
5 situations are you familiar with where more than one station
6 are operated by a common general manager and those stations
7 are licensed to different licensee?

8 A I think again here the FCC requirement even today,
9 I believe, is to have a manager and one can be clerical or
10 engineering employee to maintain license integrity. Those
11 situations were generally done through all of this period,
12 but as a practical matter in every market one management
13 type, whether they be general manager or manager, is usually
14 far better at it than another. I mean, that's why some
15 stations do dramatically better in their operating ability
16 than the next one.

17 And my, I guess, supposition here would be that in
18 almost all of these cases that better manager is called on
19 to do functions for multiple stations, even though they
20 individually have a quote/unquote "manager" for FCC purposes
21 and the licensee is responsible to that manager, but this
22 other party may be dictating more of the business function.

23 Q So are you saying you're not aware of any
24 situation where the FCC has approved the operation of
25 stations by different licensees utilizing a common general

1 manager?

2 A I don't believe there is a requirement to submit
3 to the FCC that a general manger is serving multiple
4 stations. The FCC requirements require a separate manager
5 and one employee to meet the minimum FCC requirement.

6 JUDGE CHACHKIN: So you're not saying that the FCC
7 has authorized such an arrangement?

8 THE WITNESS: The FCC rules, I don't think, break
9 it down to how it might actually happen. They just say
10 these are what we expect you to do.

11 JUDGE CHACHKIN: Well, the FCC still does have
12 concern about control, do they not?

13 THE WITNESS: I think they do, and I'm going to be
14 sort of bold and say this. In the current time, almost no
15 transaction occurs in terms of transfers of station licenses
16 unless an LMA is involved. And you would ask me, well, why
17 are they doing that? The stations want to take the station
18 they're buying and get it fixed as soon as possible so there
19 is not as much lag time economically when they take it over.
20 So many of the things that -- the prior control issue used
21 to be such an overwhelming -- you know, don't even go near
22 the station you're buying, you know, drive by it on the
23 street but don't open the door, those kind of things have
24 blurred in practical application as we have progressed into
25 the, you know, current period.

1 JUDGE CHACHKIN: You're talking about LMA
2 situations?

3 THE WITNESS: In a purchase of a station, so many
4 things happen immediately because there have been -- the
5 rumors that occur with the staff and whatnot, many people
6 will go in and interview the staff and determine who they
7 are going to keep in the first, you know, week or two of
8 announcement of an transaction, long before the FCC has
9 approved it, and they the step back until approval occurs,
10 and then they say these people stay, this is the programming
11 direction we're going to take, et cetera, and it's just --
12 it moves at a much more rapid pace now because there hadn't
13 been anybody say you couldn't do that. Evolutionary is what
14 I guess I'm saying.

15 BY MR. SHOOK:

16 Q I'd like you to turn to page 93 of Exhibit 3. It
17 was the call provision that had been discussed in your
18 earlier testimony?

19 A I apologize, but my book goes 91 to 94, and I
20 wonder if --

21 (Pause.)

22 THE WITNESS: All right, sir.

23 BY MR. SHOOK:

24 Q Now, if I recall your testimony correctly, did you
25 indicate that the five times cash flow provision was a

1 reasonable valuation for this period of time; that is, early
2 1994?

3 As we understand it, the document was executed on
4 March 31, 1994, just to give you a time frame.

5 A Yeah, that's probably toward the end of the
6 bleaker time in the industry in terms of financing. So,
7 yeah, they're operating on a low multiple because I'm sure
8 they were covering their exit strategy. If it didn't work,
9 you know, how bad can we get hurt if we have to sell it.

10 Q Well, now, what I'd like to focus on would be the
11 converse. What happens if the station, you know, takes off
12 and does well?

13 Explain to me, if you will, a scenario whereby the
14 majority member of a group is put into a position, or puts
15 himself into a position where if the station does well he
16 cannot call the shares of the minority members; that it's
17 only the minority members that can call his shares.

18 A Probably has something to do with how much each
19 has at risk financially.

20 Q According to the document, as we understand them,
21 the risks and the benefits are in accordance with the
22 membership shares, so that the person who has the most at
23 risk is the person with the highest interest.

24 A That's on it's face probably the way that one
25 would read that, but in most situations -- let's take the

1 case of had there been an outside bank here. The 51 percent
2 owner may have had less security against what the bank
3 offered in terms of financing than the minority. it's just
4 the application of risk. One side or the other may have
5 had, if it didn't work, more to lose. Not in this
6 particular incidence, but outside of that, the personal
7 guarantees, et cetera.

8 Q Well, I guess what we have to do is we have to
9 read this provision in junction with the provision that
10 appears on page 42 of Exhibit 1, and I'm afraid we're going
11 to have to just sort of look back and forth a bit.

12 A Okay.

13 Q And at this time, at least, what I'd like you to
14 do is focus on the put provision that appears in paragraph
15 two.

16 Now, when I read paragraph two of the put
17 provision, you know, of the March 31, 1994, letter in
18 conjunction with paragraph 7.4(b), what I see is a
19 combination of provisions which allows Mr. Hicks to exit.

20 A Were these executed at the same time?

21 Q Within a day of each other, if not on the same
22 day.

23 (Pause.)

24 A Okay. Your question?

25 Q Is that what you see also?

1 A Yes.

2 Q Now, what I don't see is any provision which would
3 allow Mr. Hicks to enjoy the benefits of his labor if it
4 turns out that the station performs, you know, wonderfully.
5 And I don't understand how that can work out.

6 Explain to me how that happens that the person who
7 is going to be the majority member, the person who is
8 responsible for the programming, the person who would be
9 responsible on a good way if the station turned out to be
10 wildly successful, how that person is put into a situation
11 where he can be bought out basically at any time and he
12 doesn't have the option to buy the other people out.

13 MR. BERNTHAL: Your Honor, is there a question
14 here. I'm not sure I understand.

15 MR. SHOOK: There is a question. He's asked the
16 witness to explain -- you want him to explain it in terms of
17 what his experience is --

18 MR. SHOOK: Yes, sir.

19 JUDGE CHACHKIN: -- with other stations when you
20 have a provision, a one-sided provision such as this?

21 THE WITNESS: I think every business agreement has
22 different reasons for being and different considerations in
23 it that are beneficial albeit it as you are saying different
24 for one party than another.

25 I know transactions that I have gone into

1 personally where I went in with someone with a much stronger
2 balance sheet and it didn't bother me at all that they would
3 reap more awards than I would. They took a harder fall if
4 it didn't work.

5 So in terms of risk/reward, that's something that
6 every businessperson decides when they sign any document or
7 make any business arrangement based on that particular time,
8 place and deal on the table.

9 JUDGE CHACHKIN: Well, in your experience, you
10 have seen one-sided provisions such as this, when a majority
11 stockholder enters into a transaction to purchase another
12 station?

13 THE WITNESS: Yes.

14 JUDGE CHACHKIN: You have?

15 THE WITNESS: Yes.

16 JUDGE CHACHKIN: In what cases?

17 THE WITNESS: Well, this is kind of a rough area,
18 but in many of the stations' construction permits, et
19 cetera, that came on the air right after the '89-90
20 provision was made, almost always the majority shareholder
21 and whatnot was the minimal financing, and made a nice hit
22 for very little money and/or some other party made the money
23 and put up the money.

24 JUDGE CHACHKIN: Well, wait a minute. You're
25 talking about where the majority for purposes of control, so

1 in other words, you had a minority who held the majority
2 interest for purposes of control with the situation where
3 the so-called minority owners --

4 THE WITNESS: Minority presence, right.

5 JUDGE CHACHKIN: -- were the ones that were
6 putting up all the money?

7 THE WITNESS: No, almost always there was a
8 financial entity that was backing the deal to get it done.

9 JUDGE CHACHKIN: Who was -- who was responsible
10 for this financial entity? Presumably it wasn't the
11 minority, the person who had control who did have the
12 majority of the stock?

13 THE WITNESS: That's correct.

14 JUDGE CHACHKIN: But how is this similar to this
15 situation?

16 THE WITNESS: Very. Each situation is based on --
17 you know, I don't know the particulars of what other
18 business entities Mr. Hicks might have had going at that
19 time, but this obviously at that time was a good deal for
20 him or he wouldn't have gotten into it.

21 JUDGE CHACHKIN: Well, I'm not denying it was a
22 good deal for him, but does it raise questions about the
23 bona fides of it when you have the majority stockholder here
24 agreeing to a strategy that's a one-sided approach here
25 where he is the only one who is going to get out, and can

1 get out at any time, including the day after he signs the
2 papers?

3 THE WITNESS: Well, I guess the reason someone
4 would go into a transaction like that is that they are
5 putting in a different amount of equity, and it's a good
6 business transaction for them, and they realize that they're
7 in a situation where if the other party wants to buy them
8 out, shoulder the financial responsibility, they still had a
9 good transaction.

10 JUDGE CHACHKIN: And a good transaction in terms
11 of what they received if they get out?

12 THE WITNESS: Well, again, back in this '92-93
13 period, the hope springs eternal philosophy of business was
14 a little bit dimmed, and a lot of folks were doing deals to
15 make sure that if it -- if the other side bought them out
16 for whatever reason, the risk was lower and the reward might
17 have been lower too.

18 JUDGE CHACHKIN: Have you seen a situation such as
19 this, and I'm not talking about this case, it's where you
20 have minorities and questions were raised as to the bona
21 fides of those cases? That's why the Commission has the
22 hearings. Many of those cases were found to be phoney. In
23 other words, they were just being put up as trump men
24 because they had a minority preference. But I'm not talking
25 about that kind of case. I'm talking about a case, or we're

1 not dealing with a situation where you need a minority front
2 man. I'm talking about a situation which, such as this,
3 which doesn't involve that type of scenario.

4 THE WITNESS: Well, I guess what I'm saying is
5 that in different transactions, and remember I would see
6 them from a financial standpoint, that quite often someone,
7 for whatever reason, might take the lead position in terms
8 of stock ownership, but the minority position in terms of
9 the equity or financial or the guarantee risk position.

10 And in those transactions the party generally did
11 it in order to make some money, not as much necessarily as I
12 would if I could go equal toe to toe in terms of every
13 dollar, but it works out better for me doing it this way
14 because I've got a partner who is strong.

15 JUDGE CHACHKIN: Well, are you aware of what the
16 provisions are in terms of what the contributions of each of
17 the principals ultimately?

18 THE WITNESS: I haven't read that document.

19 JUDGE CHACHKIN: Do you want to refer him to that
20 so he could -- here probably the risks are equal. We don't
21 have a situation where the minority stockholders have less
22 risk, or more risk, I should say, than Mr. Hicks, at least
23 on paper.

24 (Pause.)

25 BY MR. SHOOK:

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1 Q For purposes of this question let's assume
2 hypothetically that the membership shares and the resulting
3 benefits and risks are Mr. Hicks 51 percent and the other
4 three minority shareholders 16 point something percent in
5 order for the three of them to come out collectively as 49
6 percent.

7 A Forty-nine.

8 There is about \$21,000 difference in terms of
9 equity participation between the minors and the major here.

10 Q Well, in terms of equity participation, and again
11 hypothetically, the information we have at this point was
12 that the initial capital contribution were \$510.00 by Mr.
13 Hicks and then \$490.00 collectively by the other three
14 minority members.

15 A Right.

16 Q And that the resulting benefits and risks were
17 proportionate with that.

18 A The dollar contributions may not necessarily
19 reflect what would happen in the event of a default or
20 something like that. I mean, that's the part that's
21 unspoken.

22 Q Okay. With respect to a default, that at least I
23 can refer you to pages 42 and 43 of Exhibit 1 because there
24 is something written in there that deals with that subject.

25 A Okay.

1 Q And the guarantee that is being referenced, you
2 see the reference to a guarantee in the March 31 letter?

3 If you would turn to Exhibit 3, page 66, then
4 you'll get to see the guarantee itself, and the, you know,
5 responsibility of each of the four members.

6 A Exhibit? Which exhibit?

7 Q Exhibit 3, page 66.

8 A Yeah, the second page of that document, by the
9 way, says March 30th. That's what was throwing me.

10 Q Well, we have to look at what we have, sir.

11 A What page again, sir?

12 Q Sixty-six of Exhibit 3.

13 MR. BERNTHAL: It's Exhibit 3.

14 (Witness reviews document.)

15 THE WITNESS: Okay.

16 BY MR. SHOOK:

17 Q So let me sum up the factual situation, if I may.
18 The way we -- the way the picture has been presented to us
19 is that Mr. Hicks has a 51 percent interest in this entity,
20 that the other three members collectively have a 49 percent
21 interest; that the three minority members have an option at
22 any time to buy Mr. Hicks out in accordance with the
23 provisions that appear -- with the formula that appears in
24 7.4(b); and that after a three-year period, Mr. Hicks has
25 the option to put his membership interest to the three

1 minority members at -- using the same formula.

2 In the event there is a default and the guarantee
3 is called -- is brought into play, the respective
4 responsibility of the members appears in accordance with the
5 guarantee; that is, Mr. Hicks would be responsible for 51
6 percent of the guarantee, and collectively the other three
7 members would be responsible for 49 percent.

8 The only thing that would change in the sense of
9 how one might collect on such a guarantee is that there is
10 an understanding among the members would have to contribute
11 first.

12 A Right.

13 Q Now, putting all that together, my question is how
14 many situations like this have you seen, and is this an
15 unusual situation?

16 A I couldn't opine to how many different deals for
17 whatever reason might have taken this form over another
18 form. There is \$4500 difference in this one and like I
19 said, about \$21,000 or so in the first one, difference
20 between what the minority shareholders and the majority
21 shareholder would have to put up, but the minority have to
22 pay first in a guarantee situation in the event of a fault.

23 Each individual deal stands on its own and I don't
24 know the particulars as to why any of this was originally
25 put together. I don't think that my opinion on why someone

1 might have done something would be relevant to your question
2 as to did I see and know of other arrangements where the
3 majority could be bought out by the minority interests, yes,
4 and each one had a different financial structure on how that
5 might work.

6 JUDGE CHACHKIN: So you can't say that you've ever
7 seen situations exactly like this, where the minority could
8 buy out the majority, but the majority can't buy out the
9 minority?

10 THE WITNESS: Well, I've seen that kind of deal.

11 JUDGE CHACHKIN: But with the fact situation that
12 we have here?

13 THE WITNESS: With exactly this, I couldn't say.

14 MR. SHOOK: Your Honor, the Bureau has no further
15 questions.

16 JUDGE CHACHKIN: Let me ask you a question. You
17 said -- what I'm interested in, sir, is at what point, in
18 your judgment, does a dual operation cease to be independent
19 and raises questions about whether one licensee is
20 controlling the other licensee?

21 THE WITNESS: If the licensee abrogated their
22 ultimate responsibility to take care of their
23 responsibilities of the FCC and maintain the independence or
24 integrity of that licensee, that's when the line would be
25 crossed. But to share the operating functions or try to

1 make something good out of that sales situation and whatnot,
2 I don't see those as taking down that responsibility.

3 JUDGE CHACHKIN: So, in your view, such factors as
4 having common employees, including a common general manager,
5 is not something that would constitute, would be an indicia
6 of who was controlling the operation?

7 THE WITNESS: No, because the general manager
8 couldn't do any more or less than his ultimate employer
9 would be, and that's the two licensees. They don't have the
10 authority to change the way it operates.

11 JUDGE CHACHKIN: So the fact that one licensee --
12 well, let me ask you this. Would you be concerned at all if
13 they had a joint studio, operating from a joint studio?
14 Would that raise any questions?

15 THE WITNESS: No. I wish I could tell you the
16 year, but Paxon was on a panel with Roy Stewart at the NAB
17 in which he suggested that the stations all ought to pool
18 into one common studio area with one single bookkeeper, one
19 single engineer, and run them much like Wal-Mart where you
20 have separate departments, but all operated under the one
21 entity. We were all sitting there and he thought that was
22 revolutionary, but no comment.

23 JUDGE CHACHKIN: When you talked about using the
24 same accountant, what services did you have in mind that one
25 station would perform with the other, or this particular

1 station?

2 THE WITNESS: Payroll, payable, you know, filing
3 the quarterly tax returns, and perhaps getting ready for the
4 preliminary federal tax return for the year.

5 JUDGE CHACHKIN: What about preparing projected
6 financials?

7 THE WITNESS: That's truly a function of estimates
8 and whatnots. I wouldn't have any problem with that.

9 JUDGE CHACHKIN: You wouldn't have any problem
10 with that.

11 So what I get from your testimony, sir, is really
12 except for this ambiguous statement of ultimate control,
13 there is nothing that two stations can do for each other,
14 you could have a joint arrangement dealing with any
15 particular phase of it, that, in your view, would be a
16 consideration of whether control is being exercised for one
17 entity or the other?

18 THE WITNESS: As long as the programming integrity
19 of the stations, the ultimate views, editorial control, et
20 cetera, remains in the hands of the licensee that would be
21 in keeping with the FCC guidelines.

22 JUDGE CHACHKIN: And what's the basis of your
23 statement that that would be in keeping with the FCC
24 guidelines?

25 THE WITNESS: Well, I think the historical

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1 perspective since the 1934 Act was that each licensee is
2 responsible for that license to protect the public interest
3 and to provide the services allowed under the auspice of
4 that license. And it's just an economic model for years
5 when they were all in separate buildings, separate staff.
6 As an example, today Westwood One sells the news services of
7 CBS, NBC and Mutual. ABC, I believe, is the only stand-alone
8 radio news service remaining. All the other three operate
9 under one roof, which is ultimately owned by or operated by
10 CBS. That's -- so it's a very good possibility that we
11 will see a melding of even further operations this year, and
12 I don't think at the end of the day the public is served any
13 differently as long as each of those individual staff are
14 competitive and do what their mission is and provide that
15 service.

16 JUDGE CHACHKIN: Are you familiar at all with the
17 Commission's control cases, where they've looked at indicia
18 control?

19 I recognize you're not a lawyer.

20 THE WITNESS: I know that the intent was always to
21 make sure that the licensee wasn't doing something that they
22 weren't supposed to do in keeping their license in a proper
23 manner.

24 JUDGE CHACHKIN: Well, but are you familiar with
25 the indicia that the Commission looks at to determine

1 whether a station is exercising control?

2 THE WITNESS: In terms of the specifics, no, sir.

3 JUDGE CHACHKIN: Well, are you familiar with any
4 cases where the Commission has made judgments of whether
5 control has been exercised or not and the indicia is looked
6 at?

7 THE WITNESS: The individual items, no, sir.

8 JUDGE CHACHKIN: I have no further questions.

9 Any redirect?

10 MR. BERNTHAL: Nothing further, Your Honor.

11 (Witness excused.)

12 JUDGE CHACHKIN: Let's take a 10-minute recess.

13 (Whereupon, a recess was taken.)

14 JUDGE CHACHKIN: Let's go back on the record.

15 Next witness?

16 MR. JOHNSON: Your Honor, I think counsel is
17 retrieving the witness as we speak?

18 JUDGE CHACHKIN: Who is the next witness?

19 MR. JOHNSON: Mr. Turner.

20 (Pause.)

21 MR. HALL: Pardon me, Your Honor. The Hicks
22 Broadcasting calls Joseph Goldbach to the stand.

23 JUDGE CHACHKIN: Hicks, I thought we were dealing
24 with Pathfinder.

25 MR. HALL: The way we have worked it out we are

1 sharing Respondent's case, presenting some our witnesses
2 interspersed with theirs for a more logic presentation.

3 JUDGE CHACHKIN: Do you have any problem?

4 MR. SHOOK: No problem.

5 JUDGE CHACHKIN: Go ahead.

6 JUDGE CHACHKIN: What happened to Mr. Turner?

7 MR. HALL: He is Mr. Turner.

8 JUDGE CHACHKIN: Would you raise your right hand?

9 Whereupon,

10 JOSEPH GOLDBACH

11 having been first duly sworn, was called as a witness herein
12 and was examined and testified as follows:

13 JUDGE CHACHKIN: Please be seated.

14 DIRECT EXAMINATION

15 BY MR. HALL:

16 Q Good morning, Mr. Goldbach.

17 A Good morning.

18 Q would you introduce yourself?

19 A My name is Joseph Goldbach. I am the program
20 director and afternoon drive personality for WRBR.

21 Q Do you sometimes go by the name of Joe Turner?

22 A Yes, that's my professional name.

23 Q Where do you live, Mr. Goldbach?

24 A In Granger, Indiana, which is a suburb of South
25 Bend.

1 Q How long have you lived in that area?

2 A I've lived in the South Bend area for about four
3 and a half years.

4 Q You mentioned you're the program director for
5 WRBR. How long have you been employed with WRBR?

6 A I've been employed at WRBR since March of '95.

7 Q And as program director, what are your duties?

8 A Several duties: I do -- I hire air personalities
9 to complement the radio station; planned several promotions;
10 ;take care of public service types of things; I listen to
11 music, select the music that we play on the radio station;
12 continue monitoring my competitors in the market to make
13 sure we have or at least try to have a strategic advantage
14 over them.

15 Q Who are the stations that are WRBR's competitors?

16 A Well, to a lesser degree, everyone. But to a more
17 pointed degree, WNDU-FM, WAOR-FM, and WZOW-FM.

18 Q What makes you consider these stations your
19 primary competitor?

20 A Well, we're a rock station, and WAOR and WZOW are
21 classic rock stations, so we do share a lot of the same
22 audience. And also WNDU is a top 40 station which is
23 targeted more to younger adults, but we do share a lot of
24 the same music, the same artists, so I do keep track on what
25 they do as well.

1 Q I'm not sure if I cut you off before you finished
2 your answer. Are there any other duties as program director
3 that you haven't covered?

4 A As I said, I pick the music, listen to the music
5 that comes in; work with the sales staff on promotions,
6 promotional opportunities. It's a very long list of
7 things; just all kinds of different things to make sure that
8 we're in the public eye, keep the public interested in our
9 radio station which, of course, keeps them listening.

10 Q Let's talk a little bit about your background.

11 JUDGE CHACHKIN: Before we get to that, I don't
12 think it's clear on the record. Were you hired as the
13 program director in March 1995?

14 THE WITNESS: Yes, sir.

15 BY MR. HALL:

16 Q I'm sorry. When did you first start being the
17 program director of RBR?

18 A Oh, I started being the program director in March
19 of '95. I was hired at WRBR in March of '95.

20 JUDGE CHACHKIN: Well, that wasn't clear on the
21 record when you became program director.

22 MR. HALL: I was going to go back to that, Your
23 Honor.

24 JUDGE CHACHKIN: Oh, alright.

25 MR. HALL: I was trying to clear up this point.

1 BY MR. HALL:

2 Q Let's talk a little bit about your background in
3 radio. When was your first job in the radio business?

4 A I got my first job in the spring of 1982. I was
5 living in Detroit at the time, and I procured a job at a
6 suburban Detroit radio station.

7 Q How long did you hold that position?

8 A I worked there for approximately one year.

9 Q What were you doing for the station?

10 A I was doing the morning show and some news, some
11 public service, that kind of thing.

12 Q What was the next position you held in radio?

13 A At the time I was there I was also in college, and
14 I left there because my college studies were starting to
15 suffer a little bit and I felt it important to get my
16 degree. So I left there a year later, and focused on my
17 studies, and did a few various shifts at the college radio
18 station.

19 Q What was your next job other than college radio in
20 the radio industry?

21 A In 1986, I applied for an internship at a Detroit
22 radio station and the internship turned into a position.

23 Q What were you doing there?

24 A I was doing commercial production and air work,
25 fill in air work. When someone would take vacation or

1 someone would get sick, I will fill in for them, that kind
2 of a thing.

3 Q How long did you do that?

4 A I worked there for approximately two years.

5 Q Where did you go from there?

6 A I left there in 1988 to take a position at another
7 station in Detroit that had some better advantages.

8 Q And how long did you work at that station?

9 A I was there for three years.

10 Q Where did you go after you left Detroit?

11 A I left that station in 1991. I went to Lansing,
12 Michigan, and worked at a radio station there.

13 Q What were you doing for the station in Lansing?

14 A At first I was doing production work, I was the
15 production director, and creative services director there,
16 and thing changed and I was elevated to program director and
17 morning drive personality.

18 Q What was the format of that station?

19 A That station was what we call rhythmic CHR. It's
20 kind of a top 40 radio station, except they play more of the
21 dance music that prevails in the top 40, and stays away from
22 other types of music that the top 40 plays.

23 Q You mentioned CHR. Just for the record, what does
24 CHR mean?

25 A I sorry. Contemporary Hit Radio.

1 Q And at some point you left the station in Lansing.
2 When was that?

3 A 1994.

4 Q Where did you go from there?

5 A I moved there with my -- I moved to South Bend
6 with my then girlfriend, now wife, who was transferred to
7 the area.

8 Q Did you get a position in radio in South Bend?

9 A Yes.

10 Q Where was that?

11 A I applied for a position at WBYT.

12 Q What were you doing for WBYT?

13 A I was doing some part-time air work; weekends,
14 fill in, that type of thing.

15 Q Approximately how often would you work for BYT;
16 how many hours a week was that?

17 A Minimum was six hours. I did a Sunday afternoon
18 shift every Sunday. Sometimes a Saturday would come up.
19 Once in awhile a person would get sick or take vacation and
20 I would fill in for them. So it's hard to estimate from
21 week to week, but it was a minimum of six hours.

22 Q When approximately was it that you got the
23 position at WBYT?

24 A About the end of June 1994.

25 Q Were you doing anything for WRBR then?

1 A No, sir.

2 Q When did you first become employed by WRBR?

3 A That would have been in March of 1995.

4 Q And describe for us, if you would, what that job
5 was?

6 A At the time the morning air personality, or one of
7 them, they had two co-hosts on their morning show, he left,
8 and since the position was open, I was interested in the
9 full-time position.

10 Q How did you go about expressing that interest in
11 getting the job?

12 A I went to my program director, Phil Britten, and
13 asked him if it was a job that I could apply for, or if they
14 had hired someone else, or that kind of thing.

15 Q Now you said you went to Phil Britten. Was he
16 also -- did he also have a function at WRBR at the time?

17 A He was the program director there at that time.

18 Q What was Mr. Britten's response when you expressed
19 an interest in the position?

20 A He thought it was a good idea, a good opportunity
21 for me, and asked me to provide him with an air check, sa
22 sample of my on-air work and a resume.

23 Q Did he say why you needed to provide an air check?

24 A He told me he needed to give the air check and
25 resume to Mr. Hicks, the owner of the station, so that he